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JUN 07 2000

DLSC-P
PROCLTR 00- 02

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

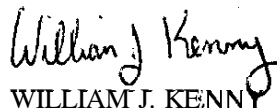
SUBJECT: Defense Priorities and Allocations System (DPAS) (DLAD 4105.1, Part 11.6)

This PROCLTR revises DLAD coverage in Part 11.6 concerning the DPAS policy to reflect the revisions in the DPAS regulation. These revisions will allow more items to be eligible for rating, but the revisions will require more manual intervention to review items for rating eligibility.

The most significant change concerns revised guidance about the prohibition against use of rated orders for commercial end items. Rated orders cannot be used for any end items that are commonly available in the commercial markets for general consumption, do not require major modification when purchased for approved program use, and are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements. DPAS Delegation 1 to 15 CFR 700 (Attachment 1) was originally interpreted to mean all commercial items DLA buys. The "end item" language in the Delegation 1 definition is now clarified to exclude repair parts, spares, and components. For items meeting the "end item" definition, DLA will only be able to rate orders if the item is not available in time to meet customer requirements. Contracts with a combination of commercial and non-commercial items need to specify which items are rated on the contract. Surge and sustainment requirements for commercial end items under a contract may qualify for a priority rating even though peacetime requirements do not because of the urgent nature of the deliveries required.

The DLAD coverage (Attachment 2) also addresses two other changes in the DPAS regulation. The first change specifies that rating of orders under \$50,000 is optional if timely delivery can otherwise be obtained (15 CFR 700.17(f)). The other change concerns orders issued against a basic long-term vehicle that does not contain a required delivery date (one of the requirements for a rated order). The DLAD clarifies that orders with a required delivery date should be **rated** (regardless of whether or **not** the underlying contract is) and are considered rated upon receipt by the supplier (15 CFR 700.12(b)).

This PROCLTR is **effective** immediately and remains in **effect** until it is **incorporated** into DLAD 4105.1. The point of contact for this PROCLTR is Mr. John King, DLSC-PON, (703) 767-1428, DSN 427-1428, or email john_king@hq.dla.mil.


WILLIAM J. KENNY

Executive Director
Logistics Policy and Acquisition Management

Attachments



U.S. Department of Commerce

DPAS DELEGATION 1

DELEGATION OF AUTHORITY TO THE SECRETARY OF DEFENSE

Defense Priorities and Allocations System
(15 CFR Part 700)

A. Authority.

Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.) and Executive Order 12919 of June 3, 1994 (59 FR29525; 3 CFR 1994 Comp., p. 901); Section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742 of January 8, 1991 (56 FR 1079; 3 CFR 1991 Comp., p. 309).

B. Purpose.

This document delegates certain authority to the Secretary of Defense necessary for the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700).

C. Rating Authority.

The Secretary of Defense is delegated authority under the DPAS to:

(1) **Place DO priority rated contracts and orders** in support of **Department of Defense (DOD) programs determined** by the Secretary as necessary or appropriate to promote the national defense with respect to military production and construction, military assistance to foreign nations, stockpiling, space, and directly related activities (approved programs). DOD approved programs are listed in DPAS Schedule 1 to Part 700. These programs include "Food resources (combat rations)", identified by the "C1" **program** identification symbol, to meet troop support requirements for combat rations, by agreement between the Departments of Agriculture and Commerce, dated January 28, 1991 (see Attachment A to this Delegation).

(2) Place DX priority rated contracts and orders in support of those DOD approved programs determined by the President to be of the Highest National Priority **as** described in the DOD Master Urgency List.

D. Co-production Programs.

(1) **The Secretary** of Defense may **request** priority rating authority from the Department of Commerce (DOC) for **specific co-production** programs, **and if granted**, may **authorize** only those foreign **firms** which have entered into a formal co-production agreement with a U.S. producer to use priority ratings.

(2) **With DOD sponsorship, DOC may authorize the use of priority ratings by other foreign firms** providing items necessary to the co-production activity on a case-by-case basis.

E. Production and Construction Equipment.

The Secretary of Defense may authorize persons to place rated orders for delivery of production or construction equipment required to support DOD approved programs and projects, when the equipment is necessary

for the timely performance or completion of rated contracts or orders and when timely delivery of the equipment cannot be obtained otherwise.

F. Delivery Scheduling.

The Secretary of Defense is delegated the authority to reschedule deliveries of materials or performance of services which are required in support of DOD approved programs, provided that such authority shall be used: (1) only to reschedule deliveries or performance among contracts or orders assigned priority ratings by DOD; and (2) only to the extent that such rescheduling requires no change in the delivery or performance schedules of other rated orders.

G. Special Priorities Assistance.

The Secretary of Defense may sponsor to DOC requests by persons for special priorities assistance upon determining the need for the requested assistance in support of DOD approved programs. DOD will: (1) serve as the initial point of contact for persons needing assistance; (2) verify the accuracy of the information provided and make reasonable efforts to resolve the issues, and, when necessary; (3) expeditiously forward the request to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep DOD advised of progress.

H. Compliance, Audits, and Training

In exercising this delegation, the Secretary of Defense should ensure that both DOD personnel and defense contractors under DOD's jurisdiction are in full compliance with the provisions of the DPAS. Accordingly:

(1) The Secretary is delegated the authority to review the implementation of the DPAS by all persons who receive, or are authorized to place, rated orders supporting DOD approved programs. However, this review shall not include inquiries into the unrated business of these persons.

(2) The Secretary shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act; the priorities provisions of the Selective Service Act, 10 U.S.C. 2538 and 2539, and 50 U.S.C. 82; and the DPAS.

(3) In consultation with DOC, the Secretary should conduct a continuing training program to ensure that appropriate DOD and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

I. Limitations of Authority

(1) This delegation shall be implemented in accordance with the DPAS and any other related regulations or official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under E.O. 12919, E.O. 12742, or any other authority.

(2) This delegated authority may not be used to support the procurement of:

(a) Civilian items for resale in Military Exchanges or the packaging for such items;

(b) Any end items that (i) are commonly available in commercial markets for general consumption; (ii) do not require major modification when purchased for approved program use; and (iii) are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements; or

(c) Any items to be used primarily for administrative purposes, such as for personnel or financial management

(3) This delegated authority shall not be used to require **action** or **compliance** by **any person** to assist in any way in the production of or other involvement in chemical or biological warfare capabilities unless authorized by the President or the Secretary of Defense without **further** relegation.

J. Redelegation of Authority.

The authority granted by this delegation may be **redelegated within** DOD and to **other** U.S. agencies administering DOD approved programs. Any **redelegations** of such authority to other U.S. agencies shall be made in writing with a copy **furnished** to **DOC**.

K. Effective Date and Revocation of Previous Delegations.

This delegation of authority shall take **effect immediately as of** the date of its execution, revoking all previous delegations issued by DOC to DOD relating to these authorities.

Dated: **7/1/98**

Signed
Iain S. Baird
Deputy Assistant Secretary
for Export Administration

Attachment A

**THE EXERCISE OF AUTHORITY BY
DEPARTMENT OF DEFENSE UNDER DPAS DEL. 1**

Executive order 12742 of January 8, 1991, continues in effect the regulations ~~otherwise~~ maintained under the Defense Production ~~Act~~ of 1950, ~~as~~ amended, with ~~respect~~ to ~~the~~ placing of priority orders for articles, products, and materials, including war materials, to the extent supported by any law or any authority delegated pursuant to the Executive Order, including regulations dealing with defense priorities. Under Sections 102 and ~~103~~ of the Executive Order, the Secretary of Agriculture is delegated authority with respect to food resources and the Secretary of commerce is delegated authority with respect to all other products and materials, including construction materials.

Critical Department of Defense programs require the placing of rated contracts and orders for food resources in support of troops. In response to this need and consistent with authority already delegated to the Secretary of Defense under DPAS Del. 1, as set forth in Appendix I to the Defense Priorities and Allocations System ~~regulations~~ (15 C.F.R. Part ~~700~~), and the Memorandum of Understanding between the Departments of Agriculture and Commerce concerning Priorities and Allocations Jurisdiction and Responsibilities for Foods which have Industrial Uses, set forth in Appendix II to ~~15~~ C.F.R. Part 700, the undersigned representatives of the Departments of Agriculture and Commerce hereby agree that, ~~notwithstanding~~ Section 700,18(b)(1) (ii), the Department of Defense may place rated contracts and orders under the Defense Priorities and Allocations System for food resources in support of troops, including but not limited to, meals ready to eat (~~MRE~~), "tray-packs" (T-rations), A-rations and R-rations.

"Food resources" shall mean all commodities and products, simple, mixed, or compound, or complements to such commodities or products, that are capable of being consumed by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. For these purposes, the term "food resources" shall also include all starches, sugars, ~~vegetable and animal fats and~~ oils, cotton, tobacco, wool, mohair, hemp, flax ~~fiber~~, and ~~naval stores~~, but shall not include any such material after it loses its identity as an agricultural commodity or agricultural product.

The Secretary of Defense may use Program Identification Symbol DO-CI, to be set forth in Schedule I to Part 700.

This exercise of authority continues in effect until terminated by either party, and may be revised as appropriate at such time as relevant final regulations are promulgated by the Department of Agriculture.

Dennis E. Kloske
Under Secretary
for Export Administration

Date: January 28, 1991

Antonio Lopez
Associate Director
for National Preparedness
Date: February 1, 1991

Richard T. Crowder
Under Secretary
International Affairs and
Commodity Programs
Date: January 28, 1991

SUBPART 11.6 - PRIORITIES AND ALLOCATIONS

11.602 General.

(a)(90) Executive Order (E.O.) 12742 implements Section 468 of the Selective Service Act (SSA). It allows for placing orders for the prompt delivery of articles or materials in support of the Armed Forces. The **This** E.O. provides that all regulations and delegations made under the Defense Production Act (DPA), which includes the Defense Priorities and Allocations System (DPAS) regulation, remain in effect. Therefore, whenever the DPA lapses, the DPAS will continue in effect under authority of the E.O. and the SSA as the basis for rating DoD contracts to insure preferential scheduling and priority treatment by contractors.

(c)(90) The rating authority continued in effect under E.O. 12742 also extends to food resources (**operational rations**) in support of troops in accordance with the Memorandum of Understanding between the Departments of Agriculture and Commerce and the determination made by the Under Secretary of Defense for Acquisition and Technology.

11.603(f)

(1) Department of Commerce (DoC) Delegation 1 to 15 CFR 700 specifies that this rating authority may not be used to support procurement of end items that are commonly available in commercial markets for general consumption, do not require major modification when purchased for approved program use, and are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements. This restriction applies only to end items and is not applicable to repair parts, spares and components which by their nature do not stand alone in their intended use but are incorporated into end items. On this basis, the DLA ICPs cannot rate peacetime buys of commercial end items, unless they are not available in a timely manner which might cause an adverse impact in meeting approved program requirements. The ICPs must ensure that the DPAS officer reviews contracts for end items to verify proper ratings are applied. End items with surge and sustainment requirements for may qualify for rating eligibility even though peacetime requirements don't because of timely delivery requirements for emergencies or contingencies. When contracts have a combination of commercial and non-commercial end items on the contract, they need to specify which items are rated. A commercial item is defined in FAR 2.101.

(2) Under the DPAS regulation a person is not required to place a priority rating on an order for less than \$50,000 or one half the FAR Simplified Acquisition Threshold, whichever is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating (15 CFR 700.17(f)). This does not preclude a person from rating an order under \$50,000 if he chooses to do so to insure timely delivery. This threshold would also apply to the mandatory priority rating extension requirements for contractors in FAR 11.603(d)(2).

(3) Orders for eligible items placed against the various long term contracting vehicles and new business practice prime vendors/virtual prime vendors should be rated and contain a required delivery date. As a result, these orders will be considered a rated order as of the date received by the supplier, in accordance with 15 CFR 700.12(b). The basic contracting vehicle may have a rating on it, but because it does not have a specified delivery date, it is not technically considered a rated contract. It should contain a statement that orders placed against this contract will be considered rated orders. See the clause in 11.604.

11.603-90 Procedures for placement of contracts when normal solicitations fail.

(a) The following procedures, in consonance with the DPAS regulation (15 CFR 700), shall apply when industry fails to adequately respond to solicitations for supplies **needed** to support the Military Services as prescribed in FAR 11.603.

(1) Reserved.

(2) To be reasonably certain that the companies upon which rated orders are placed unilaterally may not legally reject the orders (see DPAS 15 CFR 700.13(b) and (c)) and to assure that the placement of a rated order is practicable, ~~unilateral~~ rated orders **issued unilaterally** shall comply with the following:

A rated order shall not be issued unilaterally to a company when a reasonable doubt exists as to its capability to produce an item, ~~or a like item, until a~~ A plant survey ~~has been~~ **should be** made by a Defense Contract Management Command **Agency (DCMA)** field

office ~~and that office has to~~ determine that the company has the production capability, the financial capability, and the facilities to produce the item. The refusal of a company to permit such a survey, however, shall not alone be the basis for issuing a rated order. The **contracting office's** decision in such cases will be based on the best information obtainable ~~by DCMC and the contracting office.~~

(3) ~~The issuance of a unilateral~~ rated order **that is issued unilaterally results in is** a "forced" action which may generate complaints or objections from suppliers. Therefore, extreme caution is required to assure equitable distribution of the orders to selected individual firms. Within the limits prescribed in subparagraph (2) above, the quantity to be included in each rated order and the number of companies to be selected shall be determined in accordance with the following criteria:

(i) When a production line must be established to produce the specific item, the rated order quantity shall not be less than a minimum economical production run.

(ii) When the total contract requirement represents a minimum economical production run for only one (or a few) of the capable producers, the rated order(s) shall be issued to the company(ies) considered the most capable and on which the impact on production will be **least adverse** minimal.

(iii) When there are a large number of companies capable of producing the total required quantity, the most qualified companies shall be selected. The quantity placed with each company shall not exceed 20 percent of each company's total capability to produce a like ~~or similar~~ item during the production period, until the total quantity is covered. The 20 percent restriction may be exceeded when a company so desires. (Note: The 20 percent is applied against the company's total capability to produce the like or similar item, irrespective of whether the company has multiplant or single plant production facilities.)

(iv) When there are relatively few companies capable of producing the items, the total quantity shall be allocated among all qualified producers, regardless of the percentage of capacity utilized.

(v) Every effort shall be made in each case to spread the requirement in such a way as to minimize the overall impact on the affected industry.

(4) The price data for ~~these~~ rated orders **issued unilaterally** shall be developed using the latest published industry pricing data or the last award price, adjusted as necessary to reflect current market pricing conditions. Further adjustment of these prices may be necessary to meet a quality producer's standard, or to provide for a differential for a job shop's cost as compared with mass production costs. It should be noted that when pricing rated orders, the applicable requirements of FAR and the DFARS pertaining to cost or pricing data shall be followed.

(5) Reserved.

(6) Requirements for contract review and approval by the Executive Directorate, Procurement Management.

(i) The requirements of 1.690-6 for review and approval prior to award of certain type contracts are waived for contracts resulting from rated orders **that are issued** unilaterally. However, such contracts for which preaward review has been waived shall be submitted to HQ DLA for a postaward review when called for by **DLSC-PPB**.

(ii) Letter contracts still require authorization by HQ DLA in accordance with 1.690-6(g).

(7) A copy of all ~~unilateral~~ rated orders **issued unilaterally** will be forwarded to HQ DLA, ATTN: **DLSC-PON**, at time of issue.

(8) There may be instances when suppliers refuse to accept ~~unilateral~~ rated orders **issued unilaterally**. In such situations, negotiations shall be conducted at the level of the chief of the contracting office to determine whether some accommodation can be reached. ~~If the contracting office agrees that a contract requirement is inconsistent with the contractor's regularly established terms of sale but there is no authority to waive the requirement, the matter will be referred to HQ DLA, ATTN: DLSC-PON, for resolution.~~ If, in the judgment of the contracting office, the **DLA** requirement is **valid and no agreement was reached**, consistent with the contractor's regularly established terms of sale, but the parties disagree on the terms and conditions of the unilateral rated order (including failure to agree on a reasonable price), the contractor's written

refusal, citing reasons, together with a completed DoC Form **BXA** ITA-999, Request for Special Priorities Assistance, shall be forwarded through established priorities assistance channels to HQ DLA, ATTN: **DLSC-PON**, for action. It is emphasized that DoC ~~will~~ **may** not direct any company to accept a rated order when the company has proper grounds for refusing the order. Each DLA contracting office will assure that the actions and determinations described, including a physical plant survey (for exception see subparagraph (2) above) by a **DCMA** field office, have been accomplished prior to requesting HQ DLA sponsorship of a request for DoC special priorities assistance to the DoC.

11.604 Solicitation provision and contract clauses.

(90) Notice to Offerors. The clauses at 52.211-9002, Priority Rating, and **52-211-9004, Priority Rating for Various Long-term Contracts**, shall be included as appropriate in all solicitations distributed to industry for contracting action **and contracts**, except for items excluded under 15 CFR 700.18(b) **and by Delegation 1 to 15 CFR 700 for commercial and items.**

52.211-9002 Priority rating.

As prescribed in 11.604(90), insert the following clause:

PRIORITY RATING (MARCH 2000) - DLAD

This contract is assigned a priority rating under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700) which requires contractors to utilize ~~said the~~ **assigned** rating in obtaining the products, materials, and supplies needed to fill their contracts. In the event the contractor is unable to obtain the necessary products, materials, and supplies to complete the contract, the contractor shall immediately advise the **Defense Contract Management Agency (DCMA)** representative or the appropriate DSC ~~priorities and allocations (P&A)~~ **DPAS** officer through the **cognizant Administrative Contracting Officer** or **procuring** contracting officer. The **DPAS** P&A officer or the **DCMA** ~~plant representatives industrial specialist~~ will provide necessary assistance or will provide the necessary instructions to complete ~~Department of Commerce (DoC)~~ **BXA** ITA Form 999, Request for Special Priorities Assistance. This form will be processed through appropriate channels to the ~~Department of Commerce DoC who which, upon receipt,~~ will **review** and take action to make the needed supplies available to the applicant **when deemed appropriate.**

(End of clause)

52.211-9004 Priority rating for Various Long-term Contracts.

As prescribed in 11.604(90), insert the following clause in Prime Vendor, corporate, and other long-term contracts:

PRIORITY RATING FOR VARIOUS LONG-TERM CONTRACTS (MARCH 2000) - DLAD

This contract is assigned a priority rating under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700) which requires contractors to utilize the assigned rating in obtaining the products, materials, and supplies needed to fill their contracts. Because this contract does not have a specified delivery date, the basic contract is not rated; however, orders placed against it that include a delivery date are considered rated orders as of the date of receipt by the supplier. In the event the contractor is unable to obtain the necessary products, materials, and supplies to complete the contract, the contractor shall immediately advise the Defense Contract Management Agency (DCMA) representative or the appropriate Defense Supply Center DPAS officer through the **cognizant Administrative Contracting Officer** or **procuring** contracting officer. The **DPAS** officer or the **DCMA** plant representatives will provide necessary assistance or the necessary instructions to complete **Department of Commerce (DoC)** **BXA** Form 999, Request for Special Priorities Assistance. This form will be processed through appropriate channels to the DoC who will review and take action to make the needed supplies available to the applicant **when deemed appropriate.**

(End of clause)]